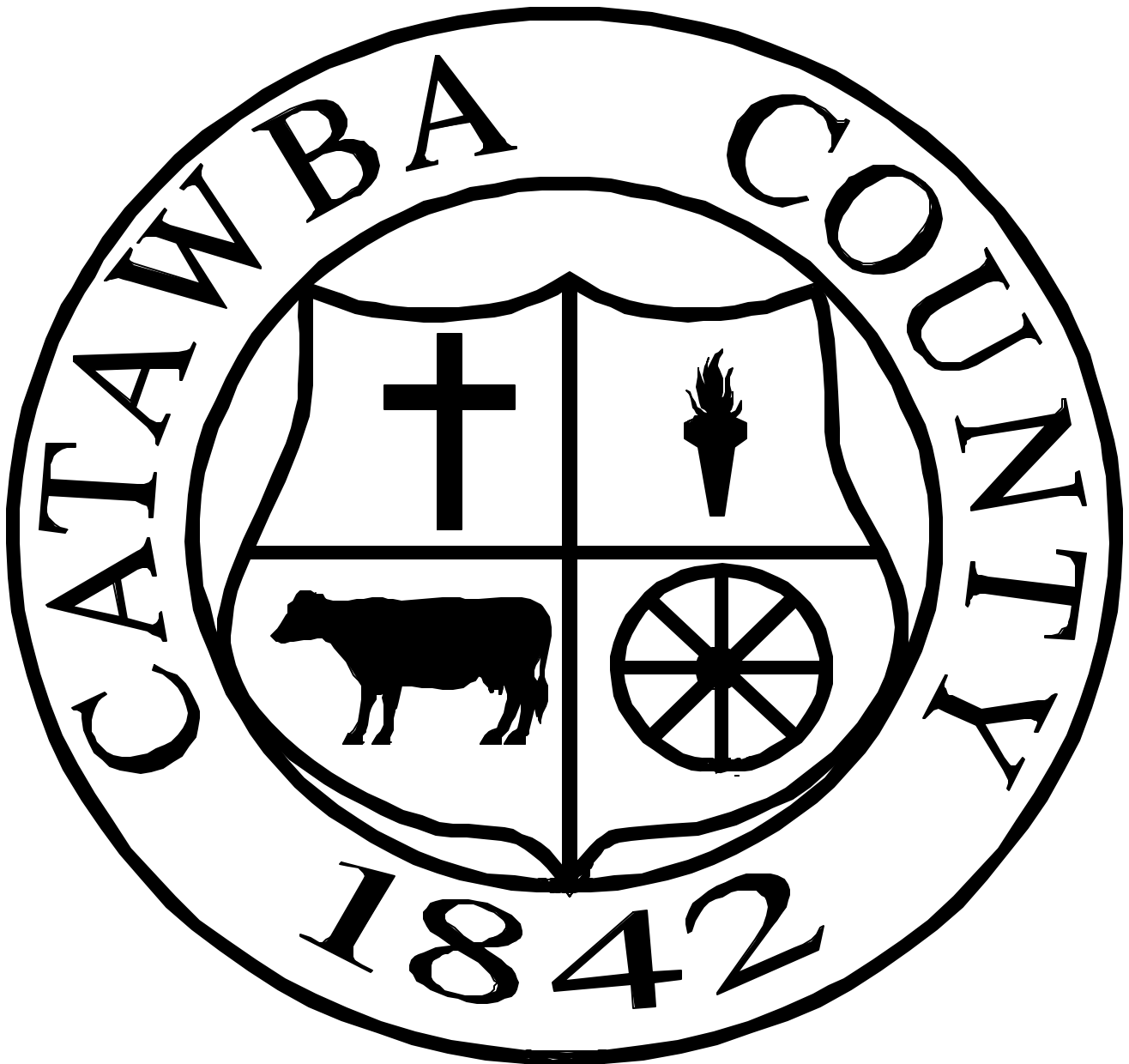


Chapter 40 – Telecommunications



Current as of 7/01/2003

Chapter 40

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***Cross references:** Zoning, ch. 44; supplemental zoning regulations for television and/or radio towers, § 44-222; standards for television and/or radio towers, § 44-368.

State law references: Authority to grant by ordinance franchises for the operation of cable television, G.S. 153A-137; authority to impose annual franchise taxes on cable television companies, G.S. 153A-154.

ARTICLE I. IN GENERAL

Secs. 40-1--40-25. Reserved.

ARTICLE II. CABLE COMMUNICATIONS

DIVISION 1. GENERALLY

Sec. 40-26. Purpose.

- (a) The county finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the people of the county. Because of the complex and rapidly changing technology associated with cable television, the county further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the county or such persons as the county shall designate.
- (b) Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the county's residents, but can provide a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve county agencies and other public institutions, by providing governmental, educational or health care communications.
- (c) For these purposes, the following goals underlie the regulations contained in this article:
 - (1) Communications services should be made available to the maximum number of county residents.
 - (2) The system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the county.
 - (3) The system should be improved and upgraded during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.
 - (4) The communications system authorized by this article shall be responsive to the needs and interests of the local community and shall make available a diversity of information sources and services to the public.

(Code 1995, § 517.001)

Sec. 40-27. Title.

This article shall be known and may be cited as "Catawba Cable Communication Regulatory Ordinance," and it shall become a part of this Code and the county ordinances.

(Code 1995, § 517.002)

Sec. 40-28. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning; words not defined shall be given their common and ordinary meaning:

Basic subscriber television services means a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the cable act, sections 614 and 615; any public, educational, and governmental access programming required in this article or the franchise; any signal of any domestic television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by the grantee at the grantee's sole discretion.

Cable communication system and *system* mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. However, such term does not include the following:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public rights-of-way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the cable act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- (4) Any facilities of any electric utility used solely for operating its electric utility systems.

Cablecast signal means a nonbroadcast signal that originates within the facilities of the cable communications system.

Channel (analog) means a six megahertz (MHz) frequency band, which is capable of carrying either one standard video signal; a number of audio, digital or other nonvideo signals; or some combination of such signals.

Closed-circuit or institutional service means video, audio, data and other services provided to institutional users on an individual application basis. These may include but are not limited to one-way video, two-way video, audio or digital signals among institutions to residential subscribers.

Commercial subscriber means a subscriber who receives a service in a place of business where the service may be utilized in connection with a business, trade or profession.

Commission means the county board of commissioners.

Communications policy act and *cable act* mean the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Television Consumer

Protection and Competition Act of 1992 and the Telecommunications Act of 1996.

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

Dedicated institutional access channels means broadband communications channels dedicated to serving city, county, state or federal governmental agencies; educational institutions; health care institutions; or other nonprofit and profitmaking organizations producing nonprofit programs.

Discrete channel means a channel which can only be received by the person and/or institution intended to receive signals on such channel.

Drop means a coaxial connection from feeder cable to the point of demarcation, outside of the subscriber's home in accordance with Federal Communications Commission rules.

Educational access channel means any channel designated for educational access use.

Fair market value means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time.

FCC means the Federal Communications Commission and any legally appointed successor.

Franchise means the nonexclusive rights granted pursuant to this article to construct, operate and maintain a cable communications system along the public ways within all or a specified area in the county. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the county as required by other ordinances and laws of the county.

Franchise area means the entire county or portions thereof for which a franchise is granted under the authority of this article. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the county, including all territory annexed to the county.

Franchise fee means the percentage, as specified by the county, of the franchisee's gross revenues from all sources payable in exchange for the rights granted pursuant to this article and the franchise agreement.

Franchisee and *grantee* mean the natural person, partnership, domestic corporation, foreign corporation, association, joint venture, or organization of any kind which has been legally granted a franchise by the county, and his or its lawful successor, transferee or assignee.

Government access channel means any channel specifically designated or dedicated for government access use.

Grantor means the county, as represented by the commission acting within the scope of its jurisdiction.

Gross annual revenues means all receipts derived annually, directly or indirectly, by the grantee, its affiliates, subsidiaries, and any person in which the grantee has a financial interest from the operation of the cable system. In addition, nonsubscriber revenues will be net of,

including but not limited to, agency fees, commissions and expenses incurred specific to the franchise area.

Installation means the connection of the system from the feeder cable to subscribers' terminals.

Leased access channel and *commercial access channel* mean any channel designated or dedicated for use by persons unaffiliated with the grantee, at rates which are fair and reasonable.

Monitoring means observing a communications signal or the absence of a signal, where the observer is not a party to the communication, whether the signal is observed by visual or electronic means, for any purpose whatsoever.

Narrowcasting means the ability to distribute cable programming to a particular segment of the cable subscribers.

Plant mile means a linear mile of cable as measured on the street or easement from pole to pole or pedestal to pedestal.

Public access channel means any channel designated or dedicated for use by the general public or noncommercial organizations which is made available for use without charge on a nondiscriminatory basis in accordance with the rules and regulations specified in the franchise.

Public way and *public right-of-way* mean the surface, the airspace above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, utility easement or other public right-of-way held by an appropriate public entity which shall entitle the county and the company to the use thereof for the purpose of installing and maintaining the company cable television system. No reference in this article or in any franchise to the "public way" shall be deemed to be a representation or guarantee by the county that its title to any property is sufficient to permit its use for such purpose, and the grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the county as the county may have the undisputed right and power to give.

Reasonable notice means written notice addressed to the grantee at its principal office within the county or such other office as the grantee has designated to the county as the address to which notice shall be transmitted to it, which notice shall be certified and postmarked not less than seven days prior to that day in which the party giving such notice shall commence any action which requires the giving of notice. In computing the seven days, weekends and holidays recognized by the county shall be excluded.

Resident means any person residing in the county as otherwise defined by applicable law.

Residential subscriber means a subscriber who receives a service in an individual dwelling unit where the service is not to be utilized in connection with a business, trade or profession.

Sale means any sale, exchange, or barter.

School means any public or nonprofit educational institution, including public and private primary and secondary schools, and public colleges and universities.

Service area means the entire geographic area within the franchise territory.

System facilities and *facilities* mean the cable communications system constructed for use within the county, including without limitation the head-end, antennas, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the county designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing, by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from subscribers in the county and any other equipment or facilities located within the corporate limits of the county intended for the use of the system. However, such system facility excludes buildings, contracts, facilities, and equipment where primary use is for providing service to other system facilities located outside the county limits.

Transfer means the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of 20 percent or more at one time of the ownership or controlling interest in the system or 50 percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert.

Trunk line means the major distribution cable used in cable communications, which divides into feeder lines which are tapped for service to subscribers.

Upstream signal means a signal originating from a terminal to another point in the cable television system, including video, audio or digital signals for either programs or other uses such as security alert services, etc.

User means a person utilizing channel or equipment and facilities for purposes of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

(Code 1995, § 517.003)

Cross references: Definitions generally, § 1-2.

Sec. 40-29. Public notice.

Minimum public notice of any public meeting relating to this article or the franchise shall be by publication at least in a newspaper of general circulation in the area at least seven days prior to the meeting, posting at county hall, by announcement on at least one channel of the grantee's cable communications system for five consecutive days prior to the meeting.
(Code 1995, § 517.110)

Sec. 40-30. Franchise applications.

- (a) *Invitation of applications for franchise, public notice of request for proposals.* The county may invite applications for a cable television franchise by means of a public notice advertising the availability of its request for proposals. The public notice shall contain but need not be limited to the following:
 - (1) A description of the franchise area which is sought.
 - (2) A statement that a formal request for proposals is available to prospective applicants from a county official whose name, address, and telephone number are specified.
 - (3) A statement that applications for the franchise must be submitted in writing in the form and manner specified in the request for proposals no later than a day certain.
 - (4) A statement that all applications will be made available for public inspection during normal business hours at a specified location.
- (b) *Request for proposals.* Prior to inviting any applications for any television franchise, the county shall prepare a request for proposals that shall contain but need not be limited to the following:
 - (1) A description of the cable television system and services desired by the county, including any system specifications established by the county.
 - (2) A statement specifying the form that all applications shall follow.
 - (3) A statement indicating the amount of the application fee, if any, to be submitted with the application, and the manner in which such fee is to be submitted.
 - (4) A statement that all applications must contain the information required by the request for proposal.
 - (5) The closing date for the submission of applications.
 - (6) The name, address, and telephone number of the county official who may be contacted for further information.
- (c) *Requirement for public hearing on reasonable notice.* The county shall conduct a public hearing prior to awarding any cable television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants and to the public and shall be

conducted by the commission in accordance with the following procedures:

- (1) There shall be an agenda for the hearing which shall specify the proposals to be considered at the hearing.
 - (2) Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.
 - (3) All persons shall be given opportunity to participate in the hearing, but nothing contained in this subsection (c)(3) shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.
 - (4) The notice of hearing shall:
 - a. Conform to all relevant state and local laws and ordinances.
 - b. Describe the agenda to be considered at the public hearing.
 - c. Indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.
- (d) *County discretion.* The county, at its discretion, may reject any application for a franchise. In awarding a franchise, the county:
- (1) Shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;
 - (2) May require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and
 - (3) May require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(Code 1995, § 517.112)

Secs. 40-31--40-55. Reserved.

DIVISION 2. FRANCHISE

Sec. 40-56. Grant.

- (a) If the county shall grant to the grantee a nonexclusive, revocable franchise to construct, operate, and maintain a cable communications system within the county, the franchise shall constitute both a right and an obligation to provide the services of a cable communications system as regulated by this article and the franchise. The franchise shall include by reference those provisions of the grantee's "application for franchise" that are finally negotiated and accepted by the county and the grantee.
- (b) The franchise shall be granted under the terms and conditions contained in this article, consistent with the county's Charter and/or other applicable statutory requirements. If a conflict occurs between the terms and conditions of this article, the franchise, or the terms and conditions on which the county can grant a franchise, the Charter and/or statutory requirements shall control.
- (c) Any franchise granted by the county is made subject to the general ordinance provisions in effect and made effective. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the county regarding permits, fees to be paid, or manner of construction.

(Code 1995, § 517.010)

Sec. 40-57. Area.

The franchise area shall be the entire county or portions thereof for which a franchise is granted pursuant to this article.

(Code 1995, § 517.011)

Sec. 40-58. Use of public rights-of-way.

For the purpose of operating and maintaining a cable communications system in the county, the grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public streets and ways within the county such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary to the operation of the cable communications systems; provided, however, that the grantee complies with all design, construction, safety, and performance provisions contained in this article, the franchise agreement, and other applicable local ordinances.

(Code 1995, § 517.012)

Sec. 40-59. Use of grantee facilities.

Pursuant to this article, no poles shall be erected by the grantee without prior approval of the county with regard to location, height, type and any other pertinent aspect. However, no location of any pole of the grantee shall be a vested right, and such poles shall be removed or modified by the grantee at its own expense whenever the county determines that the public

convenience would be enhanced thereby. The grantee shall utilize existing poles and conduits, where possible. The county shall have the right, during the life of the franchise, to install and maintain, for a reasonable fee, upon the poles owned by the grantee, any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the grantee.
(Code 1995, § 517.013)

Sec. 40-60. Required.

No cable communications system shall be allowed to occupy or use the streets of the county or be allowed to operate without a franchise.
(Code 1995, § 517.014)

Sec. 40-61. Term.

The term of any franchise granted pursuant to this article shall be stated in the franchise.
(Code 1995, § 517.015)

Sec. 40-62. Nonexclusive grant; reservation of county's rights.

- (a) Any franchise granted pursuant to this article shall be nonexclusive.
- (b) The county specifically reserves the right to:
 - (1) Grant at any time such additional franchises for a cable communication system as it deems appropriate; and/or
 - (2) Build, operate, and own such cable communication systems as it deems appropriate.

(Code 1995, § 517.016)

Sec. 40-63. Effect of time for performance of acts.

Whenever the agreement shall set forth any time for an act to be performed by or on behalf of the grantee pursuant to this article, such time shall be deemed of the essence, and any failure of the grantee to perform within the time allotted shall always be sufficient ground for the county to invoke an appropriate penalty, including possible revocation of the franchise.
(Code 1995, § 517.017)

Sec. 40-64. Controlling law for controversy or disputes.

In any controversy or dispute under this article, the law of the state shall apply.
(Code 1995, § 517.018)

Sec. 40-65. Transfer of ownership or control.

- (a) Any franchise granted under this article shall not be sold, transferred, leased, assigned or disposed of, including but not limited to transfer by force or voluntary sale, merger, consolidation, receivership or other means, nor shall the control of the grantee be changed, without the prior consent of the county, and then only under such conditions as

the county may establish.

- (b) The grantee shall promptly notify the county of any actual or proposed change in or transfer of or acquisition by any other party of control of the grantee. The word "control" as used in this subsection is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the grantee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise of 20 percent or more at one time of the ownership or controlling interest in the system or 50 percent cumulatively over the term of the franchise of such interests to a corporation, partnership, limited partnership, trust or association, or person or group of persons acting in concert. However, no consent shall be required for any sale, transfer, or assignment of ownership to an entity under common control with the grantee, provided that, prior to such transfer, the grantee provides to the county verifiable information acceptable to the county to establish that such transferee has the financial, legal, and technical ability to fully perform all obligations of the franchise.
- (c) Every change, transfer, or acquisition of control of the grantee shall make the franchise subject to cancellation unless and until the county shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the county may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the grantee shall assist the county in any such inquiry. Failure to provide all information requested by the county as part of such inquiry shall be grounds for denial of the proposed change, transfer or acquisition of control.
- (d) Assumption of control. The county agrees that any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the county that it or its designees satisfactory to the county will take control and operate the cable television system. Further, such financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise obligations during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year, unless extended by the county at its discretion and during the period of time it shall have the right to petition for transfer of the franchise to another the grantee. If the county finds that such transfer, after considering the legal, financial, character, technical and other public interest qualifications of the applicant are satisfactory, the county will transfer and assign the rights and obligations of such franchise as in the public interest. The consent of the county to such transfer shall not be unreasonably withheld.
- (e) The consent or approval of the county to any transfer of the grantee shall not constitute a waiver or release of the rights of the county in and to the streets, and any transfer shall, by its terms, be expressly subject to the terms and conditions of this article and the franchise.
- (f) In the absence of extraordinary circumstances, the county will not approve any transfer or assignment of the franchise prior to completion of construction of the proposed system.

- (g) The county reserves the right to review the purchase price of any transfer or assignment of the cable system.
- (h) Any approval by the county of transfer of ownership or control shall be contingent upon the prospective controlling party becoming a signatory to the franchise.
- (i) Timeframe for county review. The county shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission regulations and by the county. If the county fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the county agree to an extension of time.

(Code 1995, § 517.020)

Sec. 40-66. Renewal or denial.

Upon completion of the term of any franchise granted under this article, the county may in its sole discretion grant or deny renewal of the franchise of the grantee in accordance with the provisions of the cable act. The grantee shall own the cable communications system, but shall have no property right in the public rights-of-way upon the completion of the franchise term.

(Code 1995, § 517.021)

Sec. 40-67. Police powers.

- (a) In accepting the franchise pursuant to this article, the grantee acknowledges that its rights under this article are subject to the police power of the county to adopt and enforce general ordinances necessary to the safety and welfare of the public, and it agrees to comply with all applicable general laws and ordinances enacted by the county pursuant to such power.
- (b) Any conflict between this article or the franchise and any other lawful exercise of the county's police powers shall be resolved in favor of the latter. However, any such exercise that is not of general application in the jurisdiction or that applies exclusively to the grantee or cable communications systems which contains provisions inconsistent with this article shall prevail only if, upon such exercise, the county finds an emergency exists constituting a danger to health, safety, property or general welfare, and such exercise is mandated by law.

(Code 1995, § 517.022)

Sec. 40-68. Fees.

- (a) *Findings; imposed.* The county finds that:

- (1) The streets of the county and state to be used by the grantee in the operation of its system within the boundaries of the franchise area are valuable public properties acquired and maintained by the county and state at great expense to its taxpayers.
- (2) The grant to the grantee to the streets is a valuable property right without which the grantee would be required to invest substantial capital in right-of-way costs

and acquisitions.

- (3) The administration of this article and the franchise imposes upon the county additional regulatory responsibility and expense.

Therefore, the grantee of any franchise under this article shall pay to the county a franchise fee of five percent of the gross annual revenues. The annual franchise fee shall be in addition to any other fee, and the obligation to pay such fees shall commence as of the effective date of the franchise. The county shall be furnished a statement of the payment by a certified public accountant, reflecting the total amounts of annual gross revenues and such charges and commutations for the period covered by the payment.

- (b) *Fee in addition to other tax or payment.* This payment shall be in addition to any other tax or payment owed to the governments or other taxing jurisdiction by the grantee. Payment of the franchise fee made by the grantee to the county shall not be considered in the nature of a tax, but shall be in addition to any and all taxes which are or may be required to be paid by any federal, state, or local law.
- (c) *Acceptance by county.* No acceptance of any payment by the county shall be construed as a release or as an accord and satisfaction of any claim the county may have for further or additional sums payable as a franchise fee under this article or for the performance of any other obligation of the grantee.
- (d) *Failure to make required payment.* If any franchise payment is not made on or before the dates specified in this article, the grantee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the county primary depository bank during the period that such unpaid amount is owed.
- (e) *Annual payments.* The franchise fee and any other cost or damage assessed against the grantee shall be payable annually to the county. The grantee shall file a complete and accurate verified statement of all gross revenues within the franchise area during the period for which such annual payment is made, and such payment shall be made to the county no later than 45 days following the end of each calendar year.
- (f) *County's right of inspection.* The county shall have the right to inspect the grantee's income records and the right to audit and to recompute any amounts determined to be payable under this article. Audits shall be at the expense of the grantee, if the grantee is found to be five percent in arrears or more. Any additional amount due the county as a result of the audit shall be paid within 30 days following written notice to the grantee by the county, which notice shall include a copy of the audit report. However, nothing in this subsection is intended to deny the grantee the right to contest determinations made by the county.

(Code 1995, § 517.023)

Sec. 40-69. Forfeiture or revocation.

- (a) *Grounds for revocation.* The county reserves the right to revoke any franchise granted under this article and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this

article and the franchise grant:

- (1) If the grantee shall default in the performance of any of the material obligations under this article or under such documents, contracts and other terms and provisions entered into by and between the county and the grantee.
 - (2) If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required in this article.
 - (3) If the grantee shall violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this article or the franchise.
 - (4) If the grantee evades any of the sections of this article or the franchise or practices any fraud or deceit upon the county or cable subscribers.
 - (5) The grantee's construction schedule is delayed later than the schedule contained in the franchise or beyond any extended date set by the county.
 - (6) The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.
 - (7) Failure to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the county.
 - (8) Material misrepresentation of fact in the application for or negotiation of the franchise or any extension or renewal thereof.
- (b) *Effect of circumstances beyond control of grantee.* The grantee shall not be declared at fault or be subject to any sanction under any section of this article in any case in which performance of any such section is prevented for reasons beyond the grantee's control. A fault shall not be deemed to be beyond the grantee's control if committed by a corporation or other business entity which the grantee controls.
- (c) *Effect of pending litigation.* Pending litigation or any appeal to any regulatory body or court having jurisdiction over the grantee shall not excuse the grantee from the performance of its obligations under this article or the franchise unless such regulatory body or court has issued a valid order excusing such performance. Failure of the grantee to perform such obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to this section.
- (d) *Procedure prior to revocation.* The procedure prior to revocation of the franchise is as follows:
- (1) The county shall make written demand that the grantee do so comply with any such requirement, limitation, term condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the county shall place its request for termination of the franchise upon a regular commission meeting agenda. The county shall cause to be served upon such grantee, at least seven days prior to the date of such commission meeting, a written notice of this intent to request such termination and the time and place of the meeting, notice of which shall be published by the county clerk at least once, seven days before such

meeting, in a newspaper of general circulation within the county.

- (2) The commission shall hear any persons interested therein and shall determine, in its discretion, whether or not any failure, refusal or neglect by the grantee was with just cause.
 - (3) If such failure, refusal or neglect by the grantee was with just cause, as defined by the county, the commission shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
 - (4) If the commission shall determine such failure, refusal, or neglect by the grantee was without just cause, the commission shall, by resolution, declare that the franchise of the grantee shall be terminated and the performance bond forfeited unless there is compliance by the grantee within a specified period of time not to exceed 90 days.
- (e) *Disposition of facilities.* If a franchise expires, is revoked or otherwise terminated, the county may, in its sole discretion, do any of the following:
- (1) Purchase the system under the procedures set forth in section 40-74.
 - (2) Effect a transfer of ownership of the system to another party.
 - (3) Order the removal of the system facilities required by public necessity from the county within a reasonable period of time as determined by the county or require the original grantee to maintain and operate its system for a period of six months or until such further time as is mutually agreed upon.
- (f) *Restoration of property.* In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to the grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The county shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance and performance bond as provided in this article shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this subsection, this article and the franchise.
- (g) *Restoration by county; reimbursement of costs.* If the grantee fails to complete any work required by sections 40-58, 40-60 and/or subsection (f) of this section or any other work required by county law or ordinance within the time as may be established and to the satisfaction of the county, the county may cause such work to be done, and the grantee shall reimburse the county the cost thereof within 30 days after receipt of an itemized list of such costs or the county may recover such costs through the performance bond or letter of credit provided by the grantee. The county shall be permitted to seek legal and equitable relief to enforce this section.
- (h) *Extended operation.* Upon either the expiration or revocation of a franchise, the county may request the grantee to continue to operate the system for a period of six months from the date of such expiration or revocation or until such time as is mutually agreed upon.

The grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this article and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at the time. The county shall be permitted to seek legal and equitable relief to enforce this subsection.

(Code 1995, § 517.024)

Sec. 40-70. Receivership and foreclosure.

- (a) *Termination by insolvency.* The franchise granted under this article shall, at the option of the county, cease and terminate 120 days after the appointment of a receiver or trustee to take over and conduct the business of the grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of the 120 days or unless such receivers or trustees:
 - (1) Shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this article and the franchise granted pursuant to this article and the receivers or trustees within the 120 days shall have remedied all defaults under the franchise; and
 - (2) Shall, within the 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.
- (b) *Termination by judicial action.* If foreclosure or other judicial sale of the plant, property and equipment of the grantee or any part thereof occurs, including or excluding the franchise, the county may serve notice of termination upon the grantee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the grantee granted under this article shall cease and terminate 30 days after service of such notice, unless:
 - (1) The county shall have approved the transfer of the franchise, in the manner this article provides; and
 - (2) Such successful bidder shall have covenanted and agreed with the county to assume and be bound by all the terms and conditions of the franchise.

(Code 1995, § 517.025)

Sec. 40-71. Equal opportunity policy.

- (a) *Equal opportunity employment.* Equal opportunity employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, creed, religion, age, national origin, sex, or handicapping condition. The grantee shall comply with all equal opportunity provisions enacted by federal, state and local authorities, as well as all such sections contained in this article and the franchise.
- (b) *Local employment and procurement practices.* Whenever reasonably possible, all

services, personnel, hardware and supplies for the construction, maintenance and operation of the system shall be procured locally.
(Code 1995, § 517.026)

Sec. 40-72. Notices.

All notices from the grantee to the county pursuant to this article and the franchise shall be to the county manager. The grantee shall maintain with the county, throughout the term of the franchise, an address for service of notices by mail. The grantee shall also maintain with the county a local office and telephone number for the conduct of matters related to the franchise during normal business hours. The grantee shall be required to advise the county of such addresses and telephone numbers and any changes thereof.
(Code 1995, § 517.027)

Sec. 40-73. Failure of county to enforce article.

The grantee shall not be excused from complying with any of the terms and conditions of this article or the franchise by any failure of the county upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
(Code 1995, § 517.028)

Sec. 40-74. Rights reserved to grantor.

- (a) *Right to purchase.* In accordance with the cable act, if the grantee (i) forfeits and the county terminates the franchise, pursuant to this article and the franchise, or (ii) the franchise is not renewed at the normal expiration of the franchise term and the grantee has exhausted all rights to renewal under the cable act, the county shall have the right, directly or as an intermediary, to purchase the cable communications system or effect the ownership of the system to another person. For nonrenewal, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern. If the franchise is revoked for cause, the acquisition or transfer shall be at an equitable price.
- (b) *Right to inspect records.* Upon reasonable notice, the county shall have the right to inspect all books, records, reports, maps, plans, financial statements, and other like materials of the grantee at any time during normal business hours. The grantee shall provide such information in such form as may be required by the county for such records.
- (c) *Right to inspect construction.* The county shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this article and other pertinent provisions of the law.
- (d) *Right to inspect property.* At all reasonable times, the grantee shall permit examination by any duly authorized representative of the county of system facilities, together with any appurtenant property of the grantee situated within or without the county.
- (e) *Right of intervention.* The county may intervene as a matter of right in any court proceedings when the county claims an interest relating to the subject of the action and is

so situated that the disposition of the action may impair or impede the county's ability to protect that interest. The grantee shall not oppose such intervention by the county.

- (f) *Right to require removal of property.* Upon denial or renewal of this article or the franchise or upon its revocation or expiration, as provided for in this article, the county shall have the right to require the grantee to remove, at its own expense, all portions of the cable communications system required by public necessity from all streets and public ways within the county.

(Code 1995, § 517.029)

Sec. 40-75. Recourse against grantor.

Under this article, the grantee shall have no recourse whatsoever against the county or its officials, boards, commissions, agents, or employees for any loss, cost, expense or damage arising out of any provision or requirements of the franchise or because of the enforcement of this article or the franchise. However, nothing in this section is intended to deny the grantee the right to contest determinations made by the county.

(Code 1995, § 517.030)

Sec. 40-76. Regulatory authority.

- (a) The county may exercise appropriate regulatory authority under this article and applicable law. This authority shall be vested in the commission and administered through the county manager in order to provide day-to-day administration and enforcement of this article and any franchise granted under this article and to carry out the county's responsibilities with regard to cable communications.
- (b) Notwithstanding any other section of this article to the contrary, the grantee shall at all times comply with all laws and regulations of the local, state and federal government. If any actions of the state or federal government or any agency thereof or any court of competent jurisdiction upon final adjudication substantially reduce in any way the power or authority of the county under this article or the franchise or if, in compliance with any local, state, or federal law or regulation, the grantee finds conflict with the terms of this article, the franchise, or any law or regulation of the county, as soon as possible following knowledge thereof, the grantee shall notify the county of the point of conflict believed to exist between such law or regulation and the laws or regulations of the county, this article and the franchise. The county, at its option, may notify the grantee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the grantee shall negotiate in good faith with the county in the development of alternate provisions which shall fairly restore the county to the maximum level of authority and power permitted by law. The county shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of this article and the franchise.
- (c) The county reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible, to regulate the cable communications system, the franchise

and the grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the county, the county may without the approval of the grantee engage in any such additional regulation as may then be permissible, whether or not contemplated by this article or the franchise, including without limitation regulation regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter.

(Code 1995, § 517.040)

Sec. 40-77. Supervision.

- (a) Under this article the county shall have the following regulatory responsibility:
 - (1) Administration and enforcement of this article and any franchise granted under this article.
 - (2) Award, renewal, extension or termination of a franchise pursuant to this article, the franchise, and other applicable law.
 - (3) Consent prior to transfer as specified in section 40-65.
 - (4) Performance evaluation.
 - (5) Rate regulation, if applicable.
- (b) The county also reserves the right to perform the following functions:
 - (1) Develop objectives and coordinate activities related to the operation of government channels;
 - (2) Approve procedures and standards for public, government and educational access and operations and services, including the use of dedicated channels and sharing of public facilities;
 - (3) Coordinate plans for interconnection of public, governmental and educational cable services;
 - (4) Analyze the possibility of integrating cable communications with other county, state or regional telecommunications networks;
 - (5) Formulate and recommend long-range telecommunications policy for the county and determine the future cable-related needs and interests of the community;
 - (6) Provide the administrative effort necessary for the conduct of performance evaluations and any other activities required for the administration of the franchise;
 - (7) Monitor the grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints;
 - (8) Receive applications for rate increases if applicable and provide staff assistance in the analysis and recommendations thereto;
 - (9) Monitor the grantee's adherence to operational standards, service requirements and line extension policies;
 - (10) Ensure compliance with applicable laws and ordinances;

- (11) Arrange tests and analyses of equipment and performance, as needed to ensure compliance with this article and the franchise;
- (12) Ensure continuity in service; and
- (13) Receive for examination all data and reports required by this article.

(Code 1995, § 517.041)

Sec. 40-78. Rates and charges.

- (a) The grantee under this article shall file with the county schedules which shall describe all services offered, all rates and charges of any kind, and all terms and conditions relating thereto. No rates or charges shall be effective except as they appear on a schedule so filed. The grantee shall notify subscribers in writing at least 30 days prior to the implementation of any change in services offered, rates, charges, or terms and conditions related thereto.
- (b) The grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained in this article shall prohibit the grantee from offering the following:
 - (1) Discounts to commercial and multiple-family dwelling subscribers billed on a bulk basis;
 - (2) Promotional discounts; or
 - (3) Reduced installation rates for subscribers who have multiple services.

The grantee's charges and rates for all services shall be itemized on the subscriber's monthly bills.

- (c) To the extent that federal or state law or regulation may or as may be amended to authorize the county to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the grantee, the county shall have the right to exercise rate regulation to the full extent authorized by law or to refrain from exercising such regulation for any period of time, at the sole discretion of the county. The county may retain rate consultants as it deems appropriate.

(Code 1995, § 517.042)

Sec. 40-79. Performance evaluation.

- (a) Under this article evaluation sessions may be held at any time during the term of the franchise at the request of the county.
- (b) Evaluation sessions may be open to the public and announced in a newspaper of general circulation in accordance with public notice, as provided in section 40-29. The grantee shall notify subscribers of such evaluation sessions by announcement on a system channel for five consecutive days preceding each session.
- (c) Topics which may be discussed at any scheduled or evaluation session may include but

not be limited to the following:

- (1) System performance and construction;
 - (2) The grantee's compliance with this article and the franchise;
 - (3) Customer service and complaint response;
 - (4) Subscriber privacy;
 - (5) Services provided;
 - (6) Programming offered;
 - (7) Service rate structures;
 - (8) Franchise fees;
 - (9) Penalties;
 - (10) Free or discounted services;
 - (11) Application of new technologies;
 - (12) Judicial and Federal Communications Commission filings; and
 - (13) Line extensions.
- (d) During the review and evaluation by the county, the grantee shall fully cooperate with the county and shall provide such information and documents as the county may need to reasonably perform its review.

(Code 1995, § 517.043)

Secs. 40-80--40-105. Reserved.

DIVISION 3. BONDS, INSURANCE AND INDEMNIFICATION

Sec. 40-106. Performance bond and letter of credit.

- (a) *Surety instrument required.* Upon the effective date of the franchise granted pursuant to this article, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the county a corporate surety bond or an irrevocable letter of credit in an amount specified in the franchise to guarantee the faithful performance of the grantee of all its obligations provided under this article and the franchise. Failure to timely obtain, file and maintain such bond or letter of credit shall constitute a substantial violation within the meaning of this section.
- (b) *Conditions.* The performance bond shall provide the following conditions:
 - (1) There shall be recoverable by the county jointly and severally from the principal and surety any and all fines and liquidated damages due to the county and any and all damages, losses, costs, and expenses suffered or incurred by the county resulting from the failure of the grantee to:
 - a. Faithfully comply with this article and the franchise.
 - b. Comply with all orders, permits and directives of any county agency or body having jurisdiction over its acts or defaults.
 - c. Pay fees due to the county.
 - d. Pay any claims, liens or taxes due the county which arise by reason of the construction, operation, maintenance or repair of the cable system.Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses.
 - (2) The total amount of the bond shall be forfeited in favor of the county if:
 - a. The grantee abandons the cable system at any time during the term of the franchise or any extension thereto; or
 - b. The grantee assigns the franchise without the express written consent of the county.
- (c) *Reduction of surety instrument.* Upon written application by the grantee, the county may, at its sole option, permit the amount of the bond or the letter of credit to be reduced or waive the requirements for either a performance bond or letter of credit subject to the conditions set forth in this section. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the county's right to require the full bond or letter of credit at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.
- (d) *Letter of credit.* If a letter of credit is required in the franchise, the grantee shall obtain, maintain and file with the county an irrevocable letter of credit from a financial

institution licensed to do business in the state in an amount specified in the franchise, naming the county as beneficiary. The form and contents of such letter of credit shall be approved by the county and shall be released only upon expiration of the franchise or upon the replacement of the letter of credit by a successor grantee. Failure to obtain the letter of credit within the time specified shall constitute a substantial violation within the meaning of this section.

- (e) *Effect of failure to perform certain acts.* The county may draw upon the letter of credit or call on the performance bond if the grantee fails to:
 - (1) Faithfully comply with this article and the franchise;
 - (2) Comply with all orders, permits and directives of any county agency or body having jurisdiction over its acts or defaults;
 - (3) Pay fees due to the county; or
 - (4) Pay any claims, liens or taxes due the county which arise by reason of the construction, operation, maintenance or repair of the cable system.
- (f) *Use of performance bond or letter of credit.* Prior to drawing upon the letter of credit or the performance bond for the purposes described in this section, the county shall notify the grantee in writing that a noncompliance issue has arisen that is giving the county reason to draw upon the letter of credit or performance bond. The county shall extend the grantee a 30-day period within which the grantee may demonstrate that a violation does not exist or to cure an alleged violation or, if the violation cannot be corrected in 60 days, to submit a plan satisfactory to the county to correct the violation or noncompliance. If a violation or noncompliance factor is proven to exist and nor cure or action on a plan acceptable to the county has been received by the county within 30 days, the county shall notify the grantee that payment is due, and the grantee shall have ten days from the receipt of such written notice to make a full and complete payment. If the grantee does not make the payment within ten days, the county may withdraw the amount thereof, with interest and penalties, from the letter of credit or the performance bond.
- (g) *Notification.* Within three days of a withdrawal from the letter of credit or performance bond, the county shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- (h) *Replenishment of letter of credit or performance bond.* No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to subsection (f) of this section, the grantee shall replenish the letter of credit or performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the letter of credit or performance bond shall constitute a material violation of this article.
- (i) *Nonrenewal, alteration or cancellation of letter of credit or performance bond.* The performance bond or letter of credit required in this section shall be in a form satisfactory to the county and shall require 30 days' written notice of any nonrenewal, alteration or cancellation to both the county and the grantee. The grantee shall, if it receives any such cancellation notice, obtain, pay all premiums for, and file with the county written evidence of the issuance of the replacement bond or policies within 30 days following

receipt by the county or the grantee of any notice of cancellation.

- (j) *Increases.* To offset the effects of inflation, the amounts of the bond and letter of credit provided for in this section are subject to reasonable increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the county.

(Code 1995, § 517.050)

Sec. 40-107. Liability and insurance.

- (a) Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise granted pursuant to this article and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the county certificates of insurance, approved by the county, for all types of insurance required under this section. Failure to furnish the certificates of insurance in a timely manner shall constitute a violation of this article.
- (b) Any insurance policy obtained by the grantee in compliance with this section shall be filed and maintained with the county clerk during the term of the franchise and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation. The grantee shall immediately advise the county of any litigation that may develop that would affect this insurance.
- (c) Neither this section nor any damages recovered by the county under this section shall be construed to limit the liability of the grantee under any franchise issued under this article or for damages.
- (d) All insurance policies maintained pursuant to this article or the franchise shall contain the following or a comparable endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until 30 days after receipt by the County Manager, by registered mail, of a written notice of such intention to cancel or not to renew."
- (e) All contractual liability insurance policies maintained pursuant to this article or the franchise shall include the provision of the following hold harmless clause:

"The grantee agrees to indemnify, save harmless and defend the county, its officials, agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by the franchise and performed or caused to be performed. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the negligence or other fault of the county, its agents, servants, or employees or any other person indemnified hereunder."
- (f) All insurance policies provided under this article or the franchise shall be written by

companies authorized to do business in the state and approved by the state board of insurance.

- (g) To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for in this section are subject to reasonable increases at the end of every three-year period of the franchise, applicable to the next three-year period, upon the determination of the county.
- (h) General liability insurance. The grantee shall maintain and, by its acceptance of any franchise granted under this article, specifically agrees that it will maintain throughout the term of the franchise general liability insurance insuring the grantee in the minimum of the following:
 - (1) For property damage, per occurrence, \$1,000,000.00;
 - (2) For property damage, aggregate, \$2,000,000.00;
 - (3) For personal bodily injury or death to any one person, \$5,000,000.00; and
 - (4) For bodily injury or death, aggregate, per single accident or occurrence, \$10,000,000.00.
- (i) Such general liability insurance must include coverage for all of the following:
 - (1) Comprehensive form;
 - (2) Premises operations;
 - (3) Explosion and collapse hazard;
 - (4) Underground hazard;
 - (5) Products/completed operations hazard;
 - (6) Contractual insurance;
 - (7) Broad form property damage; and
 - (8) Personal injury.
- (j) Automobile liability insurance. The grantee shall maintain and, by its acceptance of any franchise granted under this article, specifically agrees that it will maintain throughout the term of the franchise automobile liability insurance for owned, nonowned, or rented vehicles in the minimum amounts as follows:
 - (1) For bodily injury and consequent death per occurrence, \$1,000,000.00.
 - (2) For bodily injury and consequent death to any one person, \$1,000,000.00.
 - (3) For property damage per occurrence, \$500,000.00.
- (k) Workers' compensation and employer's liability insurance. The grantee shall maintain and, by its acceptance of any franchise granted under this article, specifically agrees that it will maintain throughout the term of the franchise workers' compensation and employer's liability, valid in the state, in the following minimum amounts:
 - (1) Statutory limit for workers' compensation.

(2) For employer's liability, \$100,000.00.
(Code 1995, § 517.051)

Sec. 40-108. Indemnification.

- (a) To the fullest extent permitted by law, the grantee under this article shall, at its sole cost and expense, fully indemnify, defend and hold harmless the county, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims including without limitation workers' compensation claims against the county or others, causes of action, actions, liability, and judgments for injury or damages, including but not limited to expenses for reasonable legal fees and disbursements assumed by the county in connection therewith:
- (1) To persons or property, in any way arising out of or through the acts or omissions of the grantee, its subcontractors, agents or employees to which the grantee's negligence shall in any way contribute and regardless of whether the county's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury, or damage.
 - (2) Arising out of any claim for invasion of the right of privacy; for defamation of any person; or for the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, but excluding claims arising out of or related to county programming.
 - (3) Arising out of the grantee's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the grantee in its business under this article.
- (b) The indemnity in subsection (a) of this section is conditioned upon the following: The county shall give the grantee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by this section. Nothing in this section shall be deemed to prevent the county from cooperating with the grantee and participating in the defense of any litigation by its own counsel at its own costs and expense. No recovery by the county of any sum by reason of the liquidated damages required by the franchise shall be subject to litigation by the grantee, except that any sum so received by the county shall be deducted from any recovery which the county might have against the grantee under the terms of this section.

(Code 1995, § 517.052)

Secs. 40-109--40-135. Reserved.

DIVISION 4. DESIGN AND CONSTRUCTION

Sec. 40-136. Authority to construct.

- (a) *Authorization to commence construction and application procedures.* Within 30 days after acceptance by the grantee of a franchise under this article, the grantee shall apply for any needed contracts for pole use. Pole space and other facilities obtained from the county, utilities, and other lawful users of the public way shall be at the cost and expense of the grantee. Within 30 days after completion of the make-ready survey identifying the routes of the system facility, the grantee shall apply for all additional licenses from the state, county, or other necessary parties, such as the railroads for crossing under or over their property. In any event, all necessary applications for permits, licenses, certificates and authorizations shall be applied for in a timely fashion so that such filing and processing shall not interfere with or cause delay with the construction schedule as outlined in the franchise. Failure to make such timely application and timely filing shall constitute a substantial violation of this article.
- (b) *Power to contract.* Upon grant of the franchise and in order to construct, operate and maintain a cable system in the county, the grantee may:
 - (1) Enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the county;
 - (2) Obtain right-of-way permits from appropriate county, state, county, and federal officials necessary to cross or otherwise use highways or roads under their respective jurisdictions;
 - (3) Obtain permission from the Federal Aviation Administration to erect and maintain antennas; and
 - (4) Obtain whatever other permits a county, state or federal agency may require.

(Code 1995, § 517.060)

Sec. 40-137. Construction and technical standards.

- (a) *Compliance with construction and technical standards.* Under this article the grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards, and detailed technical standards submitted by the grantee as part of its application, which standards are incorporated by reference in this article. The grantee, through the system, shall provide uniform, strong signals which are free from any significant distortion and interference. The system shall be designed, constructed, operated and maintained for continuous operation 24 hours a day. The system shall produce, for reception on subscribers' receivers which are in good working order, either monochrome or color pictures (providing the receiver is color capable) which are free from any significant interference or distortion which would cause any material degradation of video or audio quality.

- (b) State of the art. The grantee shall construct, install, operate and maintain its system in accordance with the generally accepted standards in cable communications, such standards to include but not be limited to the following:
 - (1) The system will be spaced to permit a minimum of 450 MHz operation and will be capable of utilizing state-of-the-art converters and be compatible with cable-ready television sets.
 - (2) The system will utilize converters which will make the system adaptable for the development of future services.
 - (3) The grantee shall maintain its system facilities in a manner which will continue to enable it to add new services and associated equipment as they are developed, available, and proved marketable to subscribers. The new services and associated equipment will be added to the system facilities when they are determined to be technically reliable and adaptable to the system at a cost to the subscriber that is acceptable in the marketplace.
- (c) Contractor qualifications. Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the state and all local ordinances.
- (d) The grantee's system and associated equipment erected by the grantee within the county shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the such streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the grantee shall be placed in such a manner as to interfere with normal travel on such public way.
- (e) The county does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.
- (f) Construction, installation, operation, and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner, in accordance with then-current technological standards. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- (g) The grantee shall at all times comply with the following:
 - (1) National Electrical Safety Code (National Bureau of Standards).
 - (2) National Electrical Code (National Bureau of Fire Underwriters).
 - (3) Bell System Code of Pole Line Construction for fiber optics.
 - (4) Applicable Federal Communications Commission or other federal, state and local regulations; and standards as set forth in the franchise.
- (h) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the grantee may have equipment

located.

- (i) Any antenna structure used in the cable communications system shall comply with construction, marking, and lighting of antenna structure standards as required by federal and state law or regulation.
- (j) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
- (k) Federal Communications Commission rules and regulations shall govern RF leakage. The system shall cause no measurable interference in TV signal reception to any operating receiver not connected to and serviced by the system.
- (l) The grantee shall maintain equipment capable of providing standby power for a minimum of eight hours for the head-end and two hours for transportation and trunk amplifiers.
(Code 1995, § 517.061)

Sec. 40-138. System construction schedule.

The franchise granted pursuant to this article shall specify the construction schedule.
(Code 1995, § 517.062)

Sec. 40-139. Extension of service.

Under this article the grantee shall make service available to all dwelling units or commercial units within the franchise area consistent with the franchise agreement line extension policy.
(Code 1995, § 517.063)

Sec. 40-140. Use of streets.

- (a) *Underground installations.* All cable communications installations shall be underground in those areas of the county where public utilities providing either telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground; however, at such time as those facilities are required to be placed underground by the county or are placed underground, the grantee shall likewise place its services underground without additional cost to the county or to the individual subscribers so served with the county. Where not otherwise required to be placed underground by this article or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
- (b) *Permits and approvals.* Prior to construction or alteration, however, the grantee shall in each case obtain all construction permits and receive approval of the county before proceeding, which approval shall not be unreasonably withheld.
- (c) *Interference with persons, improvements, public and private property and utilities.* The

grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall not:

- (1) Endanger or interfere with the health, safety or lives or persons;
 - (2) Interfere with any improvements the county or state may deem proper to make;
 - (3) Interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
 - (4) Interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
 - (5) Obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the county.
- (d) *Restoration to prior condition.* If there is any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the county, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed in as good a condition as or better than before such work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the county. Such restoration shall be undertaken within no more than ten business days after the damage is incurred and shall be completed as soon as reasonably possible thereafter.
- (e) *Relocation of facilities.* If, at any time during the period of the franchise, the county or state shall lawfully elect to alter or change the grade of any street, alley or other public way, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (f) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the county, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 working days' advance notice to arrange for such temporary wire changes.
- (g) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing county ordinances, to trim any trees upon and overhanging the public right-of-way to prevent the branches of such trees from coming in contact with system facilities, except that, at the option of the county, such trimming may be done by it or under its supervision and direction, at the expense of the grantee.
- (h) *Easements.* All necessary easements over and under private property shall be arranged for by the grantee.
- (i) *Private property.* The grantee shall be subject to all laws, ordinances or regulations regarding private property in the course of constructing, installing, operating or maintaining the cable communications system in the county. The grantee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a

result of the construction, installation, operating or maintenance of the cable communications system at its sole cost and expense
(Code 1995, § 517.064)

Sec. 40-141. Erection, removal and common use of poles.

- (a) Under this article no poles shall be erected by the grantee without prior approval of the county with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall give rise to a vested interest, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the county determines that the public convenience would be enhanced thereby.
- (b) Where poles are available for use in serving the county by the grantee, but it does not make arrangements for such use, the county may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(Code 1995, § 517.065)

Sec. 40-142. Construction reporting requirements.

Within 30 days of the granting of a franchise pursuant to this article, the grantee shall provide the county with a written progress report detailing work completed to date. Such report shall include a description of the construction progress on a quarterly basis during initial construction or rebuilding of the cable communications system.

(Code 1995, § 517.066)

Sec. 40-143. Tests and performance monitoring.

- (a) Not later than 60 days after any new or substantially rebuilt portion of the system is made available for service to subscribers and annually thereafter, the grantee shall conduct technical performance tests to demonstrate full compliance with all technical standards contained in this article and the franchise and the technical standards and guidelines of the Federal Communications Commission.
- (b) Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the county describing test results, instrumentation, calibration, and test procedures and the qualification of the engineer responsible for the tests.
- (c) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities. Such periodic tests shall be made at the test points as shall be required by the Federal Communications Commission and/or the franchise.
- (d) A copy of any performance test reports required by the Federal Communications Commission shall be submitted to the county within 60 days of completion.

- (e) Whenever there have been similar complaints made or when there exists other evidence which, in the judgment of the county, casts doubt on the reliability or quality of the grantee's system, the county shall have the right and authority to compel the grantee to test, analyze, and report on the performance of its system. The county may require additional tests or tests involving a specific subscriber's terminal. Reports on such tests shall be delivered to the county no later than 14 days after the county formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in such testing; the results of such tests; and methods by which such complaints were resolved. Such tests and analyses shall be supervised by a qualified engineer on the permanent staff of the grantee, who shall sign all records of the special tests and forward them to the county with a report interpreting the results of the tests and recommending what actions should be taken by the county. All such tests shall be at the expense of the grantee.
- (f) The county shall have the right to employ qualified consultants and attorneys if necessary or desirable to assist in the administration of this section or any other section of this article or the franchise at the expense of the county.

(Code 1995, § 517.067)

Secs. 40-144--40-170. Reserved.

DIVISION 5. SERVICE

Sec. 40-171. Services to subscribers and users.

- (a) Concurrently with the activation of the cable communications system in the county, the grantee shall provide all services to subscribers as follows and in the franchise at rates detailed in the rate schedule:
 - (1) The system shall carry the broad categories of programming and services listed in the franchise. Should the grantee desire to change the selection of programs or services offered on any of the tiers, it shall maintain the mix, quality and level of services provided over the system. Any such change in programs or services offered shall comply with the conditions and procedures contained in the franchise and shall be reported to the county at least 30 days prior to the proposed implementation. The grantee shall notify all subscribers in writing at least 30 days prior to implementing any change in the selection of programs or services offered on any tiers or prior to adding or deleting any channels or changing the channel number for any station. The grantee shall use its best efforts to offer a diversity of programming.
 - (2) A basic service tier shall be offered to subscribers throughout the term of this article and the franchise.
 - (3) The grantee shall provide and maintain, as provided in the franchise, the following access channels whose purposes are outlined:
 - a. A government access channel, which shall be a specifically designated channel for local governmental use and shall be managed, scheduled and programmed exclusively by the county.
 - b. An educational channel, which shall be a specifically designated channel for use by local public and private school authorities and shall be managed, scheduled and programmed exclusively by them.
 - c. A public access channel, which will be a specifically designated channel available on a nondiscriminatory basis.
 - (4) The grantee shall make available leased access channels to ensure that the widest possible diversity of information sources are made available to subscribers.
 - a. Such channels shall be specially designated for leased access use by persons unaffiliated with the grantee, at rates which are fair and reasonable.
 - b. The number of such channels shall be determined by the provisions of the Cable Communications Policy Act of 1934 or other applicable federal or state law. Notwithstanding changes in applicable law, the grantee shall make available at least one leased access channel or a reasonable number of such channels as determined by the county throughout the life of the franchise to accommodate those seeking leased access. The grantee shall

advertise periodically the availability of such channels.

- c. The grantee shall not exercise any editorial control over any programming provided over such channels, except that the grantee may consider such content to the minimum extent necessary to establish a fair and reasonable price for the use of such channels.
 - (5) The grantee shall maintain and support a studio and other facilities for the production of programming as specified in the franchise.
 - (6) The grantee shall fully provide, at a minimum, services, facilities and equipment for public, educational and government access as indicated in the franchise.
 - (b) Emergency override. The grantee shall, without charge, provide, service and maintain public emergency transmission facilities to the county, as described in the franchise and consistent with relevant Federal Communications Commission rule makings.
- (Code 1995, § 517.080)

Sec. 40-172. Installations, connections and other the grantee services.

- (a) *Standard installations.* Under this article standard installation shall consist of a service not exceeding 125 feet from a single point or pedestal attachment to the customer's residence. Service in excess of 125 feet and concealed wiring shall be charged not to exceed additional installation costs before installation begins. The desire of the subscriber as to the point of entry into the residence shall be observed whenever possible. Runs in building interiors shall be as unobtrusive as possible. The grantee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by such installation. Such restoration shall be undertaken within no more than ten days after the damage is incurred and shall be completed as soon as possible thereafter.
- (b) *Antennas and antenna switches.* The grantee shall not, as a condition to providing cable communications service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals. The grantee shall install, at the subscriber's cost, upon the request of the subscriber, an RF or antenna switch where required for the provision of services provided by the grantee.
- (c) *Lockout devices.* The grantee shall provide to the potential subscriber, as part of its promotional literature, information concerning the availability of a lockout device for use by a subscriber. The grantee reserves the right to require a reasonable deposit for the use of this device, as set forth in the rate schedule. The lockout device described in this subsection shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.
- (d) *Reconnection.* The grantee shall restore service to customers wishing restoration of service, provided the customer shall first satisfy any previous obligations owed.
- (e) *Free disconnection.* Subscribers shall have the right to have cable service disconnected without charge. Such disconnection shall be made as soon as practicable or as requested. A refund of unused service charges shall be paid to the customer within 30 days from the date of termination of service.

- (f) *Delinquent accounts.* In all cases, the grantee shall provide a customer with at least seven working days' written notice prior to disconnection.
 - (g) *Prohibited activities.* In the conduct of its business franchised under this article, neither the grantee nor its officers, employees, or agents shall directly or indirectly sell, lease, repair, install, or maintain television sets or receivers or antennas. However, nothing in this subsection shall prohibit the grantee, at the customer's request and without payment, from examining or adjusting the customer's receiving set to determine whether reception difficulties originate in the set or in the grantee's system.
- (Code 1995, § 517.081)

Sec. 40-173. Service calls and complaint procedures.

- (a) The company granted a franchise pursuant to this article shall establish, operate and maintain in the county a business office and maintenance and repair facility for the purpose of receiving inquiries, requests and complaints concerning all aspects of the construction, installation, operation, and maintenance of the system and for the payment of subscribers' service charges.
- (b) The grantee shall have a listed, locally-staffed telephone number for subscriber service calls, and such telephone service shall be available 24 hours a day, seven days a week. The grantee shall provide a sufficient number of telephone lines and telephone staff members to enable subscribers to reach the grantee without unreasonable delay. The grantee's number shall be published and made available to subscribers and the general public. The grantee shall in addition provide a nonpublic, local telephone number to the county and utility companies to enable the county or the utility companies to reach the grantee in and emergency on a 24-hour, seven-day-a-week basis.
- (c) The grantee shall respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunctions of system facilities. The grantee shall respond as quickly as possible to such complaints and requests, but shall in any case respond within 24 hours. Complaints or requests which may pose a potential health and safety hazard will be responded to immediately. In connection with billing complaints, the grantee shall respond within seven business days.
- (d) The grantee shall prepare and file with the county copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. The grantee shall, by appropriate means, such as a subscriber bill, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number such inquiries or complaints are to be addressed, and furnish information concerning the county office responsible for the administration of the franchise, including but not limited to the telephone number of such office.
- (e) The grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system which required action on the part of the grantee. Complaints regarding rates and programming are excluded from this subsection. Such records shall identify the person contacting the grantee and the person responding on behalf of the grantee, the subject matter of the contact, the date and time it was received, the resolution of the matter in question or the action taken by the grantee in connection

with the contact, the date and time thereof, and such other information as may be deemed pertinent by the grantee. These records shall be made available for periodic inspection by the county.

- (f) The grantee shall service or replace without charge all equipment provided by it to the subscriber; provided, however, that the grantee may charge a subscriber for service to or replacement of any equipment damaged due to negligence of such subscriber.

(Code 1995, § 517.082)

Sec. 40-174. Continuity of service mandatory.

- (a) Under this article the grantee shall exercise reasonable commercial efforts to provide all subscribers with continuous, uninterrupted service insofar as their financial and other obligations to the grantee are honored.
- (b) If the grantee elects to rebuild, modify or sell the system or the county gives notice of intent to terminate or fails to renew its franchise, the grantee shall cooperate with the county or new grantee or operator in maintaining continuity of service to all subscribers. During such period, the grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for the services when it no longer operates the system.
- (c) Failure to provide continuity. If the grantee fails to operate the system for seven consecutive days without prior approval of the county or without just cause, the county may, at its option, operate the system or designate an operator until such time as the grantee restores service under conditions acceptable to the county or a permanent operator is selected. If the county is required to fulfill this obligation for the grantee, the grantee shall reimburse the county for all reasonable costs or damages in excess of revenues from the system received by the county that are the result of the grantee's failure to perform.

(Code 1995, § 517.083)

Sec. 40-175. Protection of subscriber privacy.

- (a) *Required.* The grantee shall at all times protect the privacy of subscribers, as provided in this article and other applicable federal, state, and local laws.
- (b) *Notice of privacy provisions.* At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, the grantee shall provide notice in the form of a separate written statement to the subscriber which clearly and conspicuously informs the subscriber of the following:
 - (1) The privacy rights of the subscriber and the limitations placed upon the grantee with regard to this section and all other applicable federal, state, and local subscriber privacy provisions.
 - (2) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information.
 - (3) The nature, frequency, and purpose of any disclosure which may be made of such

information, including an identification of the types of persons to whom the disclosure may be made.

- (4) The period during which such information might be maintained by the cable operator.
 - (5) The times and place at which the subscriber may have access to such information in accordance with this article and other applicable federal, state, and local law.
- (c) *Collection of personally identifiable information prohibited.* The grantee shall not use or permit the use of the cable system to collect personally identifiable information concerning any subscriber, except as necessary to render a cable service or other service provided by the cable operator to the subscriber. The grantee shall not install or permit the installation of any special terminal equipment in any subscriber's premises for the two-way transmission of any aural, visual, or digital signals without the prior written consent of the subscriber. The grantee shall not tabulate nor permit others to tabulate any subscriber use of the cable system which would reveal the opinions or commercial product preferences of individual subscribers, whether residential or business, or of any occupant or user of the subscriber's premises without written authorization from the subscriber for his participation in a shop-at-home or similar service. When providing such service, the grantee may tabulate only those responses essential to the functioning of that shopping or other service and may not use any such tabulation of individual preferences for any other purposes. Tabulations of aggregate opinion or preference are permitted, provided the aggregations are sufficiently large to ensure individual privacy.
- (d) *Disclosure of subscriber information prohibited.* The grantee shall not, without the specific written authorization of the individual subscribers involved, sell or otherwise make available to any party any list of the names and addresses of individual subscribers; any list which identifies the viewing habits of individual subscribers; or any personal data, social security number, income and other data the company may have on file about individual subscribers, except as necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber; provided, however, that such disclosure shall not reveal directly or indirectly the extent of viewing or other use by the subscriber of a cable service or other service provided by the cable operator or the nature of any transaction made by the subscriber over the cable system.
- (e) *Exclusions from service.* The grantee shall not predicate regular subscriber service on the subscriber's grant or denial of permission to collect, maintain or disclose personally identifiable information. A subscriber may at any time revoke any permission previously given by delivering to the grantee a written statement of that intent.
- (f) *Subscriber access to information.* Each subscriber shall be provided access to all personally identifiable information regarding such subscriber that the grantee collects or maintains or allows to be collected or maintained, and such subscriber shall be provided the opportunity to correct any error in such information.
- (g) *Destruction of information.* Any information concerning individual subscriber viewing habits or responses, except for information for billing purposes, shall be destroyed within 60 days. Information for billing purposes shall be kept for two years and then destroyed

unless otherwise required to be kept by law.

- (h) *Intent.* This section is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance.

(Code 1995, § 517.084)

Sec. 40-176. Obligations of individuals.

- (a) *Nondiscrimination required.* Under this article the grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, sex, or physical or mental handicap, provided the subscriber shall pay all applicable fees for the service desired. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are incorporated and made part of this article by reference.
- (b) *Fairness of accessibility.* The entire system of the grantee shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use. Allocation of use of the facilities shall be made according to the rules or decisions of the grantee and any regulatory agencies affecting such.
- (c) *Information accessibility.* Information shall be accessible as follows:
 - (1) Each individual shall have the right to information concerning this article and the rules and regulations formulated pursuant to it by the commission, the grantee, agent or entity created under this article or pursuant to this article. The location and hours of operation for the delivery of such information shall be published in the newspaper of the greatest circulation within the county and in such other media as the commission may determine.
 - (2) Each individual subscribing to the services of the cable communications system or leasing channels thereof or using the access channels shall be provided with a memorandum setting forth all rules and regulations specifically outlining such individual rights pertinent to such use. All rights specifically provided in this section shall be noted.
 - (3) Such information as may be prescribed under this article will be made available to the public and individual subscribers in such form required for understanding, including the deaf and blind.
 - (4) Each document required to be maintained, prepared, filed or submitted under this article or pursuant to it, except those required and designated confidential by the Federal Communications Commission, is a public document, available for public inspection and copying at the requestor's expense, at the office of the grantee or the county during normal business hours. The charge for such copying shall approximate the cost of mechanical reproduction and shall not include a charge for labor.

- (5) Each individual shall have the right to representation on such boards, commissions, agencies or other entities created under this article or by the commission pursuant to this article. Such representation by citizens of the county shall be in the manner and form as the commission may determine, ensuring equal participation of all protected groups. The grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local regulations, as may be applicable, and as amended from time to time.

(Code 1995, § 517.085)

Secs. 40-177--40-205. Reserved.

DIVISION 6. BOOKS, RECORDS AND REPORTS

Sec. 40-206. Availability of books and records to grantor.

- (a) The grantee under this article shall maintain an office within the franchise area. The county shall have the right to inspect at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the franchise.
- (b) The grantee shall permit any duly authorized representative of the county to examine and copy or transcribe any and all maps and other records kept or maintained by the grantee or under its control concerning the operations, affairs, transactions or property of the grantee. If any of such maps or records are not kept in the county, upon reasonable request the grantee will make them available in the county.

(Code 1995, § 517.100)

Sec. 40-207. Reports required.

Under this article the grantee shall provide to the county upon request, by delivery to the county clerk, the following:

- (1) *Regulatory communications.* All reports required by the Federal Communications Commission, including but not limited to annual proof of performance tests and results; Equal Employment Opportunity (EEO) reports; and all petitions, applications and communications of all types submitted by the grantee to the Federal Communications Commission, the Securities and Exchange Commission (SEC), or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the grantee's system.
- (2) *Facilities report.* An annual report setting forth the physical miles of plant construction and plant in operation during the fiscal year shall be submitted to the county. Such report shall also contain any revisions to the system as-built maps filed with the county.
- (3) *Proof of performance tests.* Proof of performance test results shall be supplied to the county when sections of the system are rebuilt and annually as required in section 40-143(a) and (b).
- (4) *Grantee rules.* The grantee's schedule of charges, contract or application forms of regular subscriber service policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the grantee's policy in connection with its subscribers shall be filed with the county and conspicuously posted in the grantee's local office. All such terms and conditions, including the schedule of charges, must have been filed with the county prior to their becoming effective. Such rules, regulations, terms and conditions shall not be in conflict with this article or applicable state and federal laws, rules or regulations.

- (5) *Financial and ownership reports.* The following financial reports for the franchise area shall be submitted annually to the county:
- a. An ownership report, indicating all persons who at any time during the preceding year did control or benefit from an interest in the franchise of one percent or more.
 - b. An annual list of officers and members of the board of the grantee and of any parent corporation upon any change.
- (6) *Operational reports.* The following system and operational reports shall be submitted annually to the county:
- a. Construction reports shall be sent to the county quarterly until construction is completed as specified in section 40-142.
 - b. Tests required by county as specified in section 40-143(e) shall be submitted within 14 days of notification.
 - c. A report on any change in programming or service shall be provided to the county 30 days prior to implementation.
 - d. The grantee shall submit to the county the required performance bond or a certified copy thereof and written evidence of payment of the required premium and all certificates of insurance required by this article or certified copies thereof and written notice of payment of the required premium.
 - e. An annual, fully audited and certified financial report from the previous calendar year, including year-end balance sheet; income statement showing subscriber revenue from each category of service and nonsubscriber revenue shall be submitted to the county.
 - f. An annual report on the system's technical tests and measurements as set forth in this article and in the franchise shall be submitted to the county.
 - g. An annual report on programs and services offered by the grantee, including public, educational, government, and leased access, shall be submitted to the county.
 - h. An annual summary of the previous year's activities, including but not limited to subscriber totals for each category of service offered, including number of pay units sold and new services offered, shall be submitted to the county.
 - i. An annual summary of complaints received and handled in addition to any reports required in the franchise shall be submitted to the county.
 - j. An annual projection of system and service plans for the future shall be submitted to the county.
- (7) *Additional reports.* The grantee shall prepare and make available, upon reasonable notice to the county at the times and in the form prescribed, such additional

reports with respect to its operation, affairs, transactions or property as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the county in connection with this article or the franchise.

(Code 1995, § 517.101)

Sec. 40-208. Records required.

- (a) *Mandatory records.* Pursuant to this article the grantee shall at all times maintain the following:
 - (1) A record of all complaints received and interruptions or degradation of service experience for the preceding period prior to a performance review.
 - (2) A full and complete set of plans, records and as-built maps showing the exact location of all cable communications system equipment installed or in use in the county, exclusive of subscriber service drops.
- (b) *Other records.* The county may impose reasonable requests for additional information, records and documents from time to time.

(Code 1995, § 517.102)

Secs. 40-209--40-235. Reserved.

ARTICLE III. WIRELESS TELECOMMUNICATIONS FACILITIES SITING

DIVISION 1. GENERALLY

Sec. 40-236. Purpose and intent.

The Telecommunications Act of 1996 affirmed the county's authority concerning the placement, construction and modification of wireless telecommunications facilities. The county finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the county and its inhabitants. The county also recognizes that facilitating the development of wireless service technology can be an economic development asset to the county and of significant benefit to the county and its residents. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the county's land use policies, the county is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this article is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, ensure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the county.
(Ord. No. 2002-11, § 519.01, 11-21-2002)

Sec. 40-237. Title.

This article shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance.
(Ord. No. 2002-11, § 519.02, 11-21-2002)

Sec. 40-238. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory facility or structure means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to,

cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the county's siting, building and permitting authority.

Applicant means any wireless service provider and/or tower company having a signed agreement with a wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

Application means all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

Collocation means the use of a tower or structure to support antennas for the provision of wireless services without increasing the height of the tower or structure more than six feet. An increase in height of more than six feet will be considered a new tower and subject to such standards.

Commercial impracticability and *commercially impracticable* mean the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Completed application means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

FAA means the Federal Aviation Administration, or its duly designated and authorized successor agency.

Fall zone means an area around the base of the tower required to be kept clear of buildings, other than an accessory facility or structure associated with the wireless telecommunications facility, to contain debris in the event of a tower structural failure, as certified by a professional engineer licensed in the state.

FCC means the Federal Communications Commission, or its duly designated and authorized successor agency.

Geomorphologic study means a study that shows the structural relationship of the soils and the appropriateness of the soils for the foundation of a wireless telecommunication tower as designed.

Height means, when referring to a tower or structure, the distance measured from the preexisting grade level to the highest point on the tower or structure, even if the highest point is an antenna or lightning protection device.

Modification means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. For purposes of clarification, adding a new wireless carrier or service provider without increasing the height to a telecommunications tower or a telecommunications site adding no more than six feet in height is a modification. A

modification shall not include the replacement of any components of a wireless facility where the replacement is of equal size or smaller to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

NIER means nonionizing electromagnetic radiation.

Person means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless facility. See *Wireless telecommunications facilities*.

Personal wireless services, PWS, personal telecommunications service and PCS shall have the same meaning as defined and used in the Telecommunications Act of 1996.

Special use permit means the official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the county.

Stealth and stealth technology mean to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

Technically impracticable means the inability to perform an act due to technical reasons.

Telecommunications means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunication site. See *Wireless telecommunications facilities*.

Telecommunications structure means a structure used in the provision of services described in the definition of *Wireless telecommunications facilities*.

Television and radio tower facilities means a structure or facility designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices for television or radio transmissions, including all related facilities such as cabling, equipment shelters and other structures associated with the site. Sections 44-222 and 44-368 regulate this type of tower.

Temporary means, in relation to all aspects and components of this article, something intended to, or that does, exist for fewer than 90 days.

Temporary cellular antenna facilities and mobile towers means a portable telecommunication facility consisting of a portable base station and a temporary tower type structure, either freestanding or guyed, used for a temporary period not to exceed 30 days. This use is exempt from the regulations of this article.

Visual addendum means before and simulated after photos of the proposed wireless telecommunication tower site.

Wireless telecommunications facilities includes the terms "telecommunications tower," "tower," "telecommunications site" and "personal wireless facility" and means a structure,

facility or location designed for, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes, without limit, towers of all types and kinds and structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving cellular, paging, E 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the county's siting, building and permitting authority, excluding those used exclusively for the county's fire or police or exclusively for private, noncommercial radio and television reception and private citizen's bands, amateur radio and other similar noncommercial telecommunications where the height of the facility is below the height limits set forth in this article.

(Ord. No. 2002-11, § 519.04, 11-21-2002)

Cross references: Definitions generally, § 1-2.

Secs. 40-239--40-265. Reserved.

DIVISION 2. SPECIAL USE PERMITS

Sec. 40-266. Policy and goals.

In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the county's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this article, the county hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (1) Implementing an application process for persons seeking a special use permit for wireless telecommunications facilities;
- (2) Establishing a policy for reviewing and analyzing an application for, and issuing, a special use permit for wireless telecommunications facilities that is both fair and consistent;
- (3) Promoting and encouraging, wherever possible, alternatives to constructing new towers, including but not limited to the collection of wireless telecommunications facilities and mitigating the visual effect of a wireless telecommunications facility to extent not commercially impracticable;
- (4) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology or camouflage techniques, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances; and
- (5) Ensuring that any wireless telecommunications facilities are designed and constructed so as to be structurally sound and otherwise safe.

(Ord. No. 2002-11, § 519.05, 11-21-2002)

Sec. 40-267. Special use permit application and other requirements.

- (a) All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this section. The county board of adjustment is the officially designated agency or body of the county to whom applications for a special use permit for wireless telecommunications facilities must be made, and the board is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The board of adjustment may at its discretion request of other official agencies of the county to accept, review, analyze, evaluate and make recommendations to the board of adjustment with respect to the granting or not granting, recertifying or not recertifying or revoking special

use permits for wireless telecommunications facilities.

- (b) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the application and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the county, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (c) Applications not meeting the requirements stated in this section, or which are otherwise incomplete, may be rejected by the county.
- (d) The applicant shall include a statement in writing that:
 - (1) The applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the county in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable county, state and federal laws, rules, and regulations.
 - (2) The construction of the wireless telecommunications facilities is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the state.
- (e) No wireless telecommunications facilities shall be installed or constructed until the application is reviewed and approved by the county, and the special use permit has been approved and all applicable permits have been obtained.
- (f) No tower owner or manager shall be permitted to submit an application for a special use permit for a tower if the tower owner does not have a signed agreement committing a commercial service provider to occupy space on the tower.
- (g) All applications for the construction or installation of new wireless telecommunications facilities shall contain the information set forth in this section. The application shall be signed by an authorized individual on behalf of the applicant. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the state. The application shall include the following information:
 - (1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily and essentially within the county. Such documentation shall include, but may not be limited to, propagation studies of the proposed site and all existing, adjoining and proposed sites;
 - (2) The name, address and phone number of the person responsible for preparing the application;
 - (3) The name, address, and phone number of the property owner, service provider or operator, and the actual applicant, and to include the legal form of the applicant;
 - (4) The E 911 address and parcel identification number (PIN) of the property;

- (5) The zoning district or designation in which the property is situated;
- (6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines. If the property is leased, the same information is required, including the access road;
- (7) The location of the nearest residential structure;
- (8) The location, size and height of all structures on the property which is the subject of the application;
- (9) The location, size and height of all proposed and existing antennas and all appurtenant structures;
- (10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- (11) The number, type and design of the tower and antenna proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
- (12) The make, model and manufacturer of the tower and antenna;
- (13) A description of the proposed tower and antenna and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;
- (14) The frequency, modulation and class of service of radio or other transmitting equipment;
- (15) The actual intended transmission and the maximum effective radiated power of the antenna;
- (16) Direction of maximum lobes and associated radiation of the antenna;
- (17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- (18) Certification that the proposed antenna will not cause interference with other telecommunications devices;
- (19) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
- (20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to ensure the stability of the proposed wireless telecommunications facilities on the proposed site;
- (21) For a new tower, a narrative explaining how the proposed facility is the least visually and physically intrusive means possible that is neither commercially nor technically impracticable, along with photographic or other graphic representations of the proposed facility in color as may be deemed necessary; and
- (22) A copy of an approved erosion control plan, where applicable.

- (h) In the case of a new tower, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing towers or the use of alternative buildings or other structures within the county. Copies of written requests and responses for shared use shall be provided to the county in the application, along with any letters of rejection stating the reason for rejection.
- (i) The applicant shall certify that the telecommunications facility, foundation and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads.
- (j) The applicant shall certify that the wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- (k) An applicant may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the county may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- (l) The applicant shall furnish a visual impact assessment, which shall include:
 - (1) A zone of visibility map which shall be provided in order to determine locations from which the tower may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints both inside and outside of the county as may be appropriate, including but not limited to state and federal highways and other scenic roadways, and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key viewpoints at a preapplication meeting.
 - (3) An assessment of the visual impact of the tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- (m) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.
- (n) Any and all representations made by the applicant to the county on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the county.
- (o) All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the county, including specifically, but not limited to, the national electrical safety code and the national electrical code, where appropriate.
- (p) All applications shall contain a demonstration that the facility is sited so as to have the least visually intrusive effect reasonably possible and thereby have the least adverse

visual effect on the environment and the nature and character of the community, on existing vegetation, and on the residences in the area of the wireless telecommunications facility.

- (q) Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or concealment technology as may be required by the county to the extent that it is not commercially impracticable or technically impracticable.
- (r) At a telecommunications site, an access road, turn around space and parking shall be provided to ensure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to ensure minimal visual disturbance and reduce soil erosion.
- (s) A person holding a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the county, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of these codes the more stringent shall apply.
- (t) A holder of a special use permit granted under this division shall obtain, at the holder's own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the county or other governmental entity or agency having jurisdiction over the applicant.
- (u) An applicant shall submit to the county the number of completed applications determined to be needed at the preapplication meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities and counties and to the county planning department.
- (v) If a new tower is proposed, the application shall contain a commitment to design and construct the tower to accommodate at least five additional commercial applications or service providers, assuming antenna arrays equivalent to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared use of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
 - (1) The foreseeable number of FCC licenses available for the area;

- (2) The kind of wireless telecommunications facilities site and structure proposed;
 - (3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites; and
 - (4) Available space on existing and approved towers.
- (w) The owner of the proposed new tower, and his successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
- (1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers, including a reasonable rate of compensation; and
 - (3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay a reasonable rate of compensation. The rate may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined in subsection (w) of this section may be grounds for revocation of the special use permit for the tower.

- (x) There shall be a site visit, if there has not been a prior site visit for the requested site in the preceding 12 months, and a preapplication meeting, both of which shall be prior to the submittal of any application, the purpose of which shall be to address issues which will help expedite the review and permitting process and any concerns regarding the site or the facility and the treatment of such. Costs of the county's consultants to prepare for and attend the preapplication meeting will be borne by the applicant.
- (y) The holder of a special use permit shall notify the county of any intended modification of a wireless telecommunications facility and shall apply to the county to modify, relocate or rebuild a wireless telecommunications facility.
- (z) In order to better inform the public, in the case of a new telecommunications tower, the applicant shall, a maximum of 14 days prior to the public hearing on the application, hold a one-day balloon test. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three-foot diameter brightly colored balloon at the maximum height of the proposed new tower. The date, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven and 14 days in advance of the first test date in a newspaper with a general circulation in the county. The applicant shall inform the county, in writing, of the date and times of the test along with the date and times of the alternate test, at least 14 days in advance. The balloon shall be flown from 7:00 a.m. to 10:00 a.m. and for three hours prior to dusk on the date chosen. The primary date shall be on a weekend, but to prevent

delays in the processing of the application, in case of poor weather on the initial date, the secondary date may be on a weekday.

- (aa) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration regulation part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- (bb) Applications shall be submitted in a three-ring binder. The application shall contain a table of contents which shall list each section and subsection and the issue required to be addressed. Requests for a waiver shall be clearly set forth and indicated in the table of contents, with an explanation for the request for a waiver contained in the appropriate section of the application. Each issue or matter addressed in the this section that requires a response shall be set forth in a separate section, i.e., tab, in the application, including requests for a waiver.

(Ord. No. 2002-11, § 519.06, 11-21-2002)

Sec. 40-268. Location of wireless telecommunications facilities.

- (a) Applicants for wireless telecommunications facilities shall locate, site and erect such wireless telecommunications facilities in accordance with the following priorities, subsection (1) being the highest priority and subsection (6) being the lowest priority:
 - (1) On existing towers or other structures without increasing the height of the tower or structure;
 - (2) On county-owned properties;
 - (3) On properties in areas zoned for industrial use;
 - (4) On properties in areas zoned for commercial use;
 - (5) On properties in areas that have an approved application on file with the county tax office for agricultural, horticulture, or forest as their use value assessment; and
 - (6) On properties in areas zoned for residential use.
- (b) If the proposed site is not proposed for the highest priority listed in subsection (a) of this section then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- (c) An applicant may not defend or justify bypassing sites of a higher priority by claiming the site proposed is the only site leased or selected. All applications shall address collocation as an option. If such option is not proposed, the applicant must explain to the

reasonable satisfaction of the county why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.

- (d) Notwithstanding subsections (a)--(c) of this section, the county may approve any site located within an area in the list of priorities in subsection (a) of this section, provided that the county finds that the proposed site is in the best interest of the health, safety and welfare of the county and its inhabitants and will not have an adverse effect on the nature and character of the community and neighborhood.
- (e) The applicant shall submit a written report demonstrating the applicant's review of the locations listed in subsection (a) of this subsection in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- (f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the county may disapprove an application for any of the following reasons:
 - (1) Conflict with safety and safety-related codes and requirements;
 - (2) Conflict with the historic nature or character of the community, a neighborhood or a historical district;
 - (3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning, land use designation, or adopted land use policies;
 - 4. The placement and location of wireless telecommunications facilities which would create an adverse impact to the public health, safety, and general welfare, or the reasonable probability of such, to residents, the public, employees and agents of the county, or employees of the service provider or other service providers; and
 - 5. Conflicts with the provisions of this article.

(Ord. No. 2002-11, § 519.07, 11-21-2002)

Sec. 40-269. Shared use.

- (a) Locating on existing towers or others structures without increasing the height shall be the highest priority established by the county, as opposed to the construction of a new tower. The applicant shall submit a comprehensive report inventorying existing towers and other functionally suitable structures within four miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used.
- (b) An application to collocate on an existing tower or other suitable structure shall contain proof of the intent of the existing owner to permit its use by the applicant.

- (c) Such shared use shall consist of only the minimum antenna array technologically required to provide service primarily and essentially within the county, to the extent practicable, unless good cause is shown.
- (d) Collocation shall be addressed as an administrative approval procedure not requiring board of adjustment action.

(Ord. No. 2002-11, § 519.08, 11-21-2002)

Sec. 40-270. Height of telecommunications towers.

- (a) Where the need for a new tower can be proven, the tower shall be structurally designed to accommodate six carriers, taking into account the neighboring tree height or the height of any nearby obstruction that would effectively block the signal in that direction. At a minimum, an applicant for a tower shall provide one set of radio frequency propagation studies on clear acetate overlay showing all existing sites adjacent to the search ring that shows the gap in coverage.
- (b) All newly erected towers, after the effective date of the ordinance from which this article is derived, including allowing for all attachments and modifications, may be constructed by right to a height of less than 200 feet.
- (c) Documentation will be analyzed in the context of the justification of the minimum height needed by for the service provider to provide service primarily within the county, to the extent practicable, unless good cause is shown.

(Ord. No. 2002-11, § 519.09, 11-21-2002)

Sec. 40-271. Appearance and visibility.

- (a) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- (b) Towers shall be galvanized or, if deemed necessary by the county to minimize the visual impact, painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this article and any conditions of the special use permit.
- (c) If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

(Ord. No. 2002-11, § 519.10, 11-21-2002)

Sec. 40-272. Security of wireless telecommunications facilities.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- (1) All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that individuals on the ground cannot climb or collide with the facility or supporting structures.

- (2) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

(Ord. No. 2002-11, § 519.11, 11-21-2002)

Sec. 40-273. Signage/open storage.

- (a) Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the names of the owners and operators of the antennas as well as emergency phone numbers. The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted, unless required by applicable law, rule or regulation.

- (b) No open storage shall be allowed on any telecommunications facility site.

(Ord. No. 2002-11, § 519.12, 11-21-2002)

Sec. 40-274. Lot size and setbacks.

All proposed towers, not including ground based equipment buildings and other related accessory facility or structure, shall be set back from all adjacent property lines, public rights-of-way, recorded rights-of-way and road and street lines, except any private easement which provides access to the wireless telecommunications facility, by a distance equal to the height of the tower or the existing setback requirements of the underlying zoning district, whichever is greater. The owner of the tower shall control by deed, lease, easement or other property interest the fall line of the tower. Any accessory facility or structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated, as measured from the property line. If a lot is created and sold (not leased) the lot must meet the minimum requirements of section 44-88.

(Ord. No. 2002-11, § 519.13, 11-21-2002)

Sec. 40-275. Retention of expert assistance and reimbursement by applicant.

- (a) The county may hire any consultant and/or expert necessary to assist the county in reviewing, analyzing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- (b) An applicant shall deposit with the county funds sufficient to reimburse the county for all reasonable costs of a consultant and any expert evaluation and consultation to the county in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00, which deposit is not a fee. The placement of the \$8,500.00 with the county shall precede the preapplication site visit and meeting. The county will maintain a separate escrow account for all such funds. Consultants shall invoice the county for services in reviewing the application, including the construction and modification of the site, once permitted, and

the county shall use this escrow to pay the consultant.

- (c) If at any time during the process the escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the county, replenish the escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the county before any further action or consideration is taken on the application. If the amount held in escrow by the county is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
- (d) The total amount of the funds needed as set forth in subsection (b) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

(Ord. No. 2002-11, § 519.14, 11-21-2002)

Sec. 40-276. Exceptions.

- (a) As of the effective date of the ordinance from which this article is derived, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those noncommercial exceptions noted in the definition of wireless telecommunications facilities in section 40-238.
- (b) All wireless telecommunications facilities existing on or before the effective date of the ordinance from which this article is derived shall be allowed to continue as they presently exist; provided, however, that any visible modification of an existing wireless telecommunications facility must comply with this article, including making application for such modification.

(Ord. No. 2002-11, § 519.15, 11-21-2002)

Sec. 40-277. Public hearing and notification requirements.

- (a) Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the county, notice of which shall be published in the official newspaper of the county once a week for two consecutive weeks no less than 15 calendar days prior to the scheduled date of the public hearing. In order that the county may notify nearby landowners, the application shall contain the names and address of all landowners whose property is located within 1,500 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.
- (b) There shall be no public hearing required for an application to collocate on an existing tower or other structure, as long as there is no more than a six-foot proposed increase in the height of the tower or structure, including attachments thereto.
- (c) The county shall schedule the public hearing referred to in subsection (a) of this section

once it finds the application is complete, and the county, at any stage prior to issuing a special use permit, may require such additional information as is deemed reasonably necessary for an informed determination and decision to be made.

(Ord. No. 2002-11, § 519.16, 11-21-2002)

Sec. 40-278. Action on an application.

- (a) The county will undertake a review of an application pursuant to this article in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances involved, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.
- (b) The county may refer any application or part thereof to any advisory or other committee for a nonbinding recommendation.
- (c) After the public hearing and after formally considering the application, the county may approve, approve with conditions, or deny a special use permit. The decision to grant or not grant a special use permit shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the permit shall always be upon the applicant.
- (d) If the county approves the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such approval in writing within ten calendar days of the county's action, and the special use permit shall be issued within 30 days after such approval. Except for necessary building permits and subsequent certificates of compliance, once a special use permit has been granted under this article, no additional permits or approvals from the county, such as site plan or zoning approvals, shall be required by the county for the wireless telecommunications facilities covered by the special use permit.
- (e) If the county denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within ten calendar days of the county's action.

(Ord. No. 2002-11, § 519.17, 11-21-2002)

Sec. 40-279. Recertification.

- (a) Between 12 months and six months prior to the five year anniversary date after the effective date of the special use permit or approved collocation/modification, whichever is the most recent, and all subsequent five-year anniversaries of the effective date of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such wireless telecommunication facilities shall submit a signed written request to the county for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
 - (1) The name of the holder of the special use permit for the wireless telecommunications facilities;
 - (2) If applicable, the number or title of the special use permit;

- (3) The date of the original grant of the special use permit;
 - (4) Whether the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified since the issuance of the special use permit and, if so, in what manner;
 - (5) If the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified, then whether the county approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 - (6) That the wireless telecommunications facilities are in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations; and
 - (7) Recertification that the tower and attachments both are designed and constructed and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the state, the cost of which shall be borne by the applicant.
- (b) If, after such review, the county determines that the permitted wireless telecommunications facilities are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the county shall issue a recertification of the special use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review, it is determined that the permitted wireless telecommunications facilities are not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the county may refuse to issue a recertification of the special use permit for the wireless telecommunications facilities, and, in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of the decision by the county until such time as the facility is brought into compliance. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the facility. All fees are subject to a fee schedule adopted by the board of commissioners.
- (c) If the applicant has submitted all of the information requested and required by this article, and if the review is not completed, as noted in subsection (b) of this section, prior to the five-year anniversary date of the special use permit, or subsequent five-year anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six months, in order for the completion of the review.
- (d) If the holder of a special use permit for wireless telecommunications facilities does not submit a request for recertification of such special use permit within the timeframe noted in subsection (a) of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries, unless the

holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the county agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

(Ord. No. 2002-11, § 519.18, 11-21-2002)

Sec. 40-280. Extent and parameters.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

- (1) Such special use permit shall be nonexclusive;
- (2) Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the county; and
- (3) Such special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this article after prior written notice to the holder of the special use permit.

(Ord. No. 2002-11, § 519.19, 11-21-2002)

Sec. 40-281. Application fee.

- (a) At the time that a person submits an application for a special use permit for a new tower, or collocation on an existing tower or other such suitable structure where no increase in height of the tower or structure is required, such person shall pay a nonrefundable application fee to the county. All fees are subject to a fee schedule adopted by the board of commissioners.
- (b) No application fee is required in order to recertify a special use permit for wireless telecommunications facilities, unless there has been a visible modification of the wireless telecommunications facility since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in subsection (a) of this section shall apply.

(Ord. No. 2002-11, § 519.20, 11-21-2002)

Sec. 40-282. Performance security.

- (a) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its sole cost and expense, be required, jointly if appropriate, to execute and file with the county a bond or other form of security acceptable to the county as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the county to ensure the faithful performance of the terms and conditions of this article and conditions of any special use permit issued pursuant to this article. The full amount of the bond or security shall remain in full force and effect throughout the term of the initial

special use permit. A bond must be approved and renewed on a yearly basis; proof of such renewal must be submitted to the county planning office at least 60 days prior to the previous year's bond expiration. Either the continuation of the same security or the placement of a new one will be required as part of the required recertification and each period of recertification thereafter, unless the county, in writing, permits a reduction in the amount or its elimination. The security for the last period of recertification shall remain in effect until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

- (b) Notwithstanding subsection (a) of this section, the security for a collocated facility shall be \$25,000.00.

(Ord. No. 2002-11, § 519.21, 11-21-2002)

Sec. 40-283. Authority to inspect.

In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the county may inspect all facets of such permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site upon approval from facility owner.

(Ord. No. 2002-11, § 519.22, 11-21-2002)

Sec. 40-284. Annual NIER certification.

The holder of the special use permit shall, annually, certify to the county that NIER levels at the site are within the threshold levels adopted by the FCC.

(Ord. No. 2002-11, § 519.23, 11-21-2002)

Sec. 40-285. Liability insurance.

- (a) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth:

- (1) *Commercial general liability covering personal injuries, death and property damage.* \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
- (2) *Automobile coverage.* \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
and
- (3) *Workers compensation and disability.* Statutory amounts.

- (b) The commercial general liability insurance policy shall specifically include the county and its officers, boards, employees, committee members, attorneys, agents and

consultants as additional insured.

- (c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
- (d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the county with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- (e) Renewal or replacement policies or certificates shall be delivered to the county at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special use permit or any recertification of the special use permit, the holder of the special use permit shall deliver to the county a copy of each of the policies or certificates representing the insurance in the required amounts.

(Ord. No. 2002-11, § 519.24, 11-21-2002)

Sec. 40-286. Indemnification.

- (a) Any application for wireless telecommunications facilities that is proposed for county property, pursuant to this article, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the county, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of such facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the county, or its servants or agents. With respect to the penalties, damages or charges referenced in this section, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the county.
- (b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the county itself applies for and secures a special use permit for wireless telecommunications facilities.

(Ord. No. 2002-11, § 519.25, 11-21-2002)

Sec. 40-287. Fines.

- (a) In the event of a violation of this article or any special use permit issued pursuant to this article, the county may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the county, fines or penalties as permitted by state law.

- (b) A violation of this article is hereby declared to be an offense, punishable by a fine not exceeding that which is permitted under state law for conviction of a first offense. For conviction of a second offense, both of which were committed within a period of five years, the holder of a special use permit issued under this article may be sanctioned by a fine of not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700.00 nor more than \$1,000.00 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors, and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each day after the first seven days following notification that the violation continues shall constitute a separate additional violation, punishable separately and individually.
- (c) Notwithstanding anything in this article, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other sanctions or penalties to evade or avoid compliance with this article or any section of this article. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The county may also seek injunctive relief to prevent the continued violation of this article, without limiting other remedies available to the county.

(Ord. No. 2002-11, § 519.26, 11-21-2002)

Sec. 40-288. Default and/or revocation.

- (a) If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this article or of the special use permit, then the county shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected immediately if an eminent health or safety hazard exists or within 30 days for a nonemergency situation, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this article, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the county may, at its sole discretion, order the violation remedied within 24 hours.
- (b) If, within the period set forth in subsection (a) of this section, the wireless telecommunications facilities are not brought into compliance with the provisions of this article, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the county may revoke such special use permit for wireless telecommunications facilities, and shall notify the holder of the special use permit within 48 hours of such action.

(Ord. No. 2002-11, § 519.27, 11-21-2002)

Sec. 40-289. Removal of wireless telecommunications facilities.

- (a) Under the following circumstances, the county may determine that the health, safety, and welfare interests of the county warrant and require the removal of wireless telecommunications facilities:
 - (1) Wireless telecommunications facilities with a special use permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any three 365-day periods, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days.
 - (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that they create a health or safety hazard;
 - (3) Wireless telecommunications facilities have been located, constructed or modified without first having obtained the required special use permit or modification thereof, or any other necessary authorization.
- (b) If the county makes such a determination as noted in subsection (a) of this section, then the county shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that such wireless telecommunications facilities are to be removed. The county may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.
- (c) The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the county. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the county.
- (d) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the holder of the special use permit has received notice, then the county may order officials or representatives of the county to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder. If, the county removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten days, then the county may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.
- (e) Notwithstanding anything in this section to the contrary, the county may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the county, and an agreement to such plan shall be executed by the holder of the special use permit and the county. If

such a plan is not developed, approved and executed within the 90-day time period, then the county may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

(Ord. No. 2002-11, § 519.28, 11-21-2002)

Sec. 40-290. Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this article may request such at the preapplication meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of providing the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the county in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the county, its residents and other service providers.

(Ord. No. 2002-11, § 519.29, 11-21-2002)

Sec. 40-291. Periodic regulatory review by the county.

- (a) The county may at any time conduct a review and examination of this entire article.
- (b) If after such a periodic review and examination of this article, the county determines that one or more provisions of this should be amended, repealed, revised, clarified, or deleted, then the county may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the county, the county may repeal this entire article at any time.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the county may at any time, and in any manner (to the extent permitted by federal, state, or local law), amend, add, repeal, and/or delete one or more provisions of this article.

(Ord. No. 2002-11, § 519.30, 11-21-2002)

Sec. 40-292. Adherence to state and/or federal rules and regulations.

- (a) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and radio frequency emission standards.
- (b) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are changed

and/or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

(Ord. No. 2002-11, § 519.31, 11-21-2002)